

CHAPTER NO. 248

SENATE BILL NO. 1788

By Fowler, McNally, Williams

Substituted for: House Bill No. 1868

By Scroggs, McDaniel, Dunn

AN ACT To amend Tennessee Code Annotated, Section 71-3-120 and Title 71, Chapter 5, Part 3, relative to fraud involving public assistance benefits.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 71-3-120, is amended by deleting the section in its entirety and by substituting instead the following language:

71-3-120. Fraudulent receipt of temporary assistance-Penalties-Statute of Limitations.

(a) A person commits an offense who, knowingly, obtains, or attempts to obtain, or aids, or abets any person to obtain, by means of a willfully false statement, representation, or impersonation, or by any other fraudulent means or in any manner not authorized by this part, or by the regulations or procedures issued or implemented by the Department of Human Services pursuant to this part, temporary assistance for a dependent child as provided pursuant to this part, either by check or by an electronic benefits transfer process, or any assistance provided pursuant to this part by any other means as determined by the department, to which such child is not entitled or in an amount greater than that to which such child is entitled.

(b) A person commits an offense who, knowingly, in any manner not authorized by this part or the regulations or procedures implemented by the Department of Human Services pursuant to this part, presents for payment, or causes to be presented for payment, transfers, exchanges, sells, or otherwise uses, or aids or abets any person to present for payment, transfer, exchange, sell, or otherwise use any temporary assistance check, or any electronic benefits card, authorization or personal identification number, device or other thing or means issued or utilized for the purpose of providing temporary assistance benefits pursuant to this part electronically or otherwise.

(c) A person who receives a temporary assistance check or any electronic benefits card, authorization or personal identification number, device or other thing or means issued or utilized for the purpose of providing temporary assistance benefits electronically or otherwise, knowing them to have been presented for payment, transferred, exchanged, sold or otherwise used in any manner not authorized by this part or the regulations or procedures implemented by the Department of Human Services pursuant to this part, commits an offense.

(d) An offense under this section is a Class E felony if the value of such temporary assistance sought to be obtained, or which is obtained, is one hundred dollars (\$100) or more, and upon conviction

thereof, such person shall be sentenced for such offense as provided by law, or shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or both; and, if such temporary assistance sought to be obtained, or which is obtained, is of a value less than one hundred dollars (\$100), such person commits a Class A misdemeanor and shall be sentenced or fined, or both, as provided by law.

(e) In addition to or in lieu of any of the foregoing penalties, the court may order that such person be disqualified from participation in the temporary assistance program for twelve (12) months for the first offense, twenty-four (24) months for the second offense, and permanently for the third offense. Disqualification pursuant to this section of any person from eligibility for assistance under this part shall not operate to disqualify or suspend the eligibility of an innocent adult or child of the disqualified person's family.

(f) The department shall enclose a copy of the penalties provided in this section one (1) time, in notice form, to each recipient of assistance pursuant to this part and post a notice to such effect in noticeable places in each of its assistance offices.

(g) In addition to any of the foregoing penalties, any person convicted of any offense specified in subsections (a), (b) or (c) shall be ordered to make restitution in the total amount found to be the value of the temporary assistance which forms the basis for the conviction. In the event any person ordered to make restitution pursuant to this section is found to be indigent and, therefore, unable to make restitution in full at the time of conviction, the court shall order a periodic payment plan consistent with the person's financial ability.

(h) Notwithstanding any other provision of law to the contrary, prosecutions for any of the offenses specified in subsections (a), (b) or (c) shall be commenced within four (4) years next after the commission of the offense. For purposes of this subsection, any such offense which is based upon a willful failure to report information as required by law is considered a continuing offense until such information is reported.

SECTION 2. Tennessee Code Annotated, Section 71-5-304, is amended by adding, immediately following the language "food stamp" wherever it appears in subsections (1), (2), and (6), the language "or food assistance".

SECTION 3. Tennessee Code Annotated, Section 71-5-304, is amended by adding, immediately following the language "food stamp assistance" wherever it appears in subsections (3) and (4), the language "or food assistance".

SECTION 4. Tennessee Code Annotated, Section 71-5-304, is amended by deleting the language "purchase benefits" wherever it appears in subdivisions (5) and (6), and by substituting instead the language "assistance".

SECTION 5. Tennessee Code Annotated, Section 71-5-314, is amended by deleting the section in its entirety and by substituting instead the following language:

71-5-314. Fraudulent receipt of food assistance-Penalties-Statute of Limitations. (a) A person commits an offense who, knowingly, obtains, or attempts to obtain, or aids, or abets any person to obtain, by means of a

willfully false statement, representation, or impersonation, or by any other fraudulent means or in any manner not authorized by this part, or by the regulations or procedures issued or implemented by the Department of Human Services pursuant to this part, any food coupons, food stamps, or food assistance benefits provided by any electronic benefits transfer process, or any assistance provided pursuant to this part by any other means as determined by the department, to which such person is not entitled or of a greater value than that to which such person is entitled.

(b) A person commits an offense who, knowingly, in any manner not authorized by this part or the regulations or procedures implemented by the Department of Human Services pursuant to this part, presents for payment, or causes to be presented for payment, transfers, exchanges, sells, or otherwise uses, or aids or abets any person to present for payment, transfer, exchange, sell, or otherwise use any food coupons, food stamps or food assistance benefits, or any electronic benefits card, authorization or personal identification number, device or other thing or means issued or utilized for the purpose of providing temporary assistance benefits pursuant to this part electronically or otherwise.

(c) A person who receives food coupons, food stamps or food assistance benefits or any electronic benefits card, authorization or personal identification number, device or other thing or means issued or utilized for the purpose of providing food assistance benefits electronically or otherwise, knowing them to have been presented for payment, transferred, exchanged, sold or otherwise used in any manner not authorized by this part or the regulations or procedures implemented by the Department of Human Services pursuant to this part, commits an offense.

(d) An offense under this section is a Class E felony if the value of such food stamps, food coupons, or food assistance sought to be obtained, or which is obtained, is one hundred dollars (\$100) or more, and upon conviction thereof, such person shall be sentenced for such offense as provided by law, or shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or both; and, if the food stamps, food coupons, or food assistance sought to be obtained, or which is obtained, is of a value less than one hundred dollars (\$100), such person commits a Class A misdemeanor and shall be sentenced or fined, or both, as provided by law.

(e) In addition to or in lieu of any of the foregoing penalties, the court may order that such person be disqualified from participation in the food coupon, food stamp or food assistance program for twelve (12) months for the first offense, twenty-four (24) months for the second offense, and permanently for the third offense. Disqualification pursuant to this section of any adult from eligibility for assistance under this part shall not operate to disqualify or suspend the eligibility of an innocent adult or child of the disqualified person's family.

(f) The department shall enclose a copy of the penalties provided in this section one (1) time, in notice form, to each recipient of assistance pursuant to this part and post a notice to such effect in noticeable places in each of its assistance offices.

(g) In addition to any of the foregoing penalties, any person convicted of any offense specified in subsections (a), (b) or (c) shall be ordered to make restitution in the total amount found to be the value of the food coupons, food stamps or food assistance which form the basis for the conviction. In the event any person ordered to make restitution pursuant to this section is found to be indigent and, therefore, unable to make restitution in full at the time of conviction, the court shall order a periodic payment plan consistent with the person's financial ability.

(h) Notwithstanding any other provision of law to the contrary, prosecutions for any of the offenses specified in subsections (a), (b) or (c) shall be commenced within four (4) years next after the commission of the offense. For purposes of this subsection, any such offense which is based upon a willful failure to report information as required by law is considered a continuing offense until such information is reported.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 7. This act shall take effect on July 1, 1999, the public welfare requiring it.

PASSED: May 20, 1999


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 27th day of May 1999


DON SUNDQUIST, GOVERNOR